



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

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Mr. John C. Richter
Acting Assistant Attorney General
Criminal Division
United States Department of Justice
950 Pennsylvania Avenue, NW
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Dear Mr. Richter:

As the Congressman for the 2nd District of Kansas, I am firmly committed to supporting legislation that provides law enforcement with the tools and resources needed to protect public safety. In particular, I am concerned about the growing problem of sexual abuse and exploitation of our children.

Recently, I learned of a case, *United States v. Jan P. Helder, Jr.*, (CR-00125-DW), a resident of Mission Hills, Kansas. As I understand the facts of the case, Mr. Helder was convicted after a jury trial of violating 18 USC Section 2242(b), when he used a computer in an attempt to entice a minor to engage in unlawful sexual activity. Notwithstanding the jury's verdict, United States District Judge for the Western District of Missouri, Dean Whipple acquitted Mr. Helder, citing the fact that the minor was an undercover FBI agent posing as a minor on the computer, claiming that the statute requires that the victim is in fact a minor—not an undercover agent acting as a minor.

Judge Whipple's decision is contrary to established case law in the four circuits that have considered this issue. In *United States v. Jeffrey Meek*, the 9th Circuit Court of Appeals specifically addressed the question of whether Section 2442(b) applies when the actual victim is an adult rather than a minor. In this case, the Court concurred with decisions of the 5th, 6th, and 11th Circuit Courts in finding that "an actual minor victim is not required for an attempt conviction under 18 U.S.C. § 2422(b)."¹ The Court goes on to note that Section 2442 requires "*mens rea*, that is, a guilty mind,"² but concludes that whether the perpetrator was mistaken in his knowledge of who he was communicating with is irrelevant.

Judge Whipple ignored the law cited above, and instead relied on the previously-rejected defense of impossibility to support his decision to acquit Mr. Helder. Judge Whipple stated, "Legal impossibility 'refers to those situations in which the intended acts, even if successfully carried out, would not amount to a crime. Thus, attempt is not

¹ *United States v. Root*, 296 F.3d 1222, 1227 (11th Cir. 2002).

² *United States v. Meek*, (9th Cir. 2004).

unlawful where success is not a crime, and this is true even though the defendant believes his scheme to be criminal.’ ”³ In his own words, Judge Whipple reveals the fault of his reasoning. What the defendant was attempting to do was entice a minor into unlawful sexual activity; his intent was not to solicit an undercover agent. Hence, had he succeeded in his intended act, the result *unquestionably* would have been a crime.

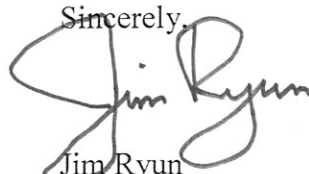
I am hopeful that the Justice Department will appeal Judge Whipple’s decision. If permitted to stand, the practical impact of such a ruling would have devastating consequences for prosecutions of child predators who troll the Internet looking for children to entice and ultimately harm.

I appreciate the Department’s commitment to enforcement of existing law to protect our children from these harmful predators who use the Internet, and specifically applaud the FBI’s Innocent Images National Initiative. I urge you to continue to aggressively track down and prosecute sex offenders on the Internet through the Innocent Images program, as well as other State and Federal programs.

Lastly, I hope to work with you and the Department to implement any statutory changes or clarifications needed by law enforcement to protect our Nation’s children. I want to ensure that criminals who attempt to entice children over the Internet do not use loopholes to gain acquittals when their vicious intent is clear. Please contact Emily Newton in my office at (202) 225-6601 if you have suggestions in this area.

Thank you for your cooperation in addressing my concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Ryun". The signature is stylized with a large, looping "J" and "R".

Jim Ryun
Member of Congress

³ *United States of America v. Jan P. Helder*. (W.D. MO. 2005) (Whipple, D. Judgment of Acquittal), p. 4.